IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6896 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL TRANSPORT SERVICE - Petitioner(s)

Versus

STALIN ADWORD SOLANKI - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1.

BALKRISHNA ACHARYA for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 02/08/2005

ORAL JUDGMENT

Draft Amendment is allowed. Rule. Shri Balkrishna Acharya, learned advocate waives service of Rule on behalf of respondent. With the consent of both the learned advocates appearing for the parties, the matter is taken up for Final Hearing today.

2. In this petition under Articles 226/227 of the Constitution of India, the petitioner Ahmedabad Municipal Transport Service has challenged the legality and validity of the judgment and award passed by the Labour Court, Ahmedabad, dated 18th January 2005 in Reference (LCA) No. 777 of 2003 by the Labour Court has directed the petitioner to reinstate the respondent workman without backwages, however with continuity of service.

3. The respondent workman was serving as Cleaner in the Workshop of the petitioner Transport Service. He was unauthorisedly absent during the period from January 2002 to June 2002 for 62 days without getting the leave sanctioned. A departmental inquiry was initiated against him by issuing chargesheet dated 1.8.2002. On conclusion of the departmental inquiry and holding that the charge of unauthorised absenteeism was proved against him, the disciplinary authority by order dated 27.11.2002 dismissed the respondent workman from service. Being aggrieved and dissatisfied with the order of dismissal dated 27.11.2002 passed by the disciplinary authority the respondent workman raised industrial dispute which was referred to the Labour Court, Ahmedabad for adjudication being Reference (LCA) No. 777 of 2003. The Labour Court, holding that the punishment of dismissal on the charge of remaining absent for 62 days without getting leave sanctioned was disproportionate to the misconduct and the charge

proved against him, quashed and set aside the order of dismissal passed by the disciplinary authority and directed the petitioner to reinstate the respondent workman without backwages however with continuity of service. Being aggrieved and dissatisfied with the judgment and award dated 18th January 2005 passed by the Labour Court, Ahmedabad, in Reference (LCA) No. 777 of 2003, the petitioner has preferred the present Special Civil Application under Articles 226/227 of the Constitution of India.

4. Shri H.S. Munshaw, learned advocate appearing on behalf of the petitioner has submitted that it was not the case of only remaining absent for 62 days during the period from January 2002 to June 2002 but earlier also the respondent workman remained absent on number of occasions; and in fact there were 22 defaults against him out of which 15 defaults were with regard to absenteeism without getting the leave sanctioned and 7 defaults were for other misconducts. It is submitted by him that though the same were mentioned in the final second show cause notice the Labour Court has not considered the same at all and as if it was the first misconduct of unauthorised absence without getting the leave sanctioned the Labour Court has interfered with the order of punishment imposed by the disciplinary authority. By way of Draft Amendment the petitioner has produced the final show cause notice and the default card relating to the respondent workman to show that there

is reference to 22 defaults against the respondent workman. Therefore it is requested to allow the present Special Civil Application.

5. Shri Balkrishna Acharya, learned advocate appearing on behalf of the respondent workman has submitted that the default card was not produced before the Labour Court and therefore there was no question of considering the same by the Labour Court. It is submitted that merely because there was some reference with regard to past defaults on the part of the respondent workman in the final show cause notice it is not that the petitioner was not required to produce the same before the Labour Court for its consideration. Under the circumstances it is requested to not to consider the said default card which is produced before this Court for the first time in the present Special Civil Application. It is also further submitted that considering the fact that the petitioner was absent for 62 days without getting the leave sanctioned denial of backwages only would be the sufficient punishment. It is therefore requested to dismiss the present Special Civil Application. In the alternative, it is submitted that if the Court decides to remand the matter to the Labour Court for allowing the petitioner to produce the Default Card in that case some costs may be imposed and the Reference may be ordered to expedite.

6. Shri Munshaw, learned advocate appearing for

the petitioner has submitted that due to negligence on the part of an Officer the Default Card was not produced before the Labour Court, however with regard to the same there is a mention in the 2nd show cause notice which was already produced before the Labour Court, it is submitted that if one additional opportunity is given to the petitioner to allow them to produce the default card before the Labour Court while remanding the matter to the Labour Court it will meet the ends of justice. It is submitted that if the default card was produced and/or it was pointed out to the Labour Court about the past defaults earlier then the Labour Court might not have interfered with the order of punishment imposed by the disciplinary authority. It is therefore requested to pass appropriate orders.

7. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the respondent workman remained absent for 62 days during the period January 2002-June 2002 without getting the leave sanctioned. The Labour Court has interfered with the order of punishment imposed by the disciplinary authority considering the same as too harsh and disproportionate to the misconduct and the charge proved against him, and denied the backwages only. I have gone through the Default Card produced by the petitioner. There are 22 defaults against the respondent workman, out of which 15 are with regard to unauthorised absenteeism without getting the leave

sanctioned. On going through the same, it, prima facie, appears that the respondent workman was habitual in remaining absent without getting the leave sanctioned right from 1979. It is true, that the Default Card was not produced before the Labour Court. However, there is a reference to 22 defaults against the respondent workman in the 2nd show cause notice which was on record of the Labour Court but the same has not been considered and/or dealt with by the Labour Court at all. If the attention was drawn of the Labour Court to the said 22 defaults against the respondent workman to point out that out of such 22 defaults, 15 defaults were with regard to unauthorised absence without getting the leave sanctioned and that the respondent workman was habitual in remaining absent without sanction of leave, then it might be that the Labour Court would not have interfered with the order of punishment imposed by the disciplinary authority.

7.1. In the facts and circumstances, therefore, it will be in fitness of things if the matter is remanded to the Labour Court so as to enable the petitioner to produce the Default Card before the Labour Court for its consideration rather than this Court's consideration.

8. For the reasons stated herein above, the

judgment and award dated 18th January 2005, passed by the Labour Court, Ahmedabad in Reference (LCA) No. 777 of 2003, is hereby quashed and set aside. In light of what is stated hereinabove, the matter is remanded to the Labour Court, Ahmedabad with a direction to decide and dispose of the Reference, on remand, within the period of six months from the date of receipt of this order. As there is default on the part of the petitioner in non-production of the default card before the Labour Court, the petitioner is directed to pay an amount of Rs. 5000 (Five Thousand) towards the costs of the present Special Civil Application to the respondent workman within the period of four weeks from today. Rule is made absolute to the aforesaid extent with order as to costs as aforesaid.

[M.R. Shah, J.]

RMR.